

No record is shewn of any departure from this practice, unless the case of Hawkesbury constitutes one. Cases are spoken of in which a road only half a chain in width has been left, others where a chain and a half and even a double width or double allowance has been left, but no case of no allowance has been shewn, unless this case furnishes one. But I do not think there is anything in the facts or circumstances of this case to warrant us in assuming that such an unusual course was intended or adopted. Too much weight ought not to be attached to the circumstance that the copy of Fortune's play of survey in the department does not indicate, by the presence of two lines at a distance from each other, which by scale would make the width of a road, the existence of a road on the boundary between Hawkesbury and Lochiel.

The same omission appears with regard to the roads in front of the concessions, although it is quite apparent from the field notes that an allowance for such roads was left in the survey. Rather ought the preference be given to the working plans on record in the department, which do shew the roads in both places. According to the evidence of Mr. G. B. Kirkpatrick, director of surveys in the department of Crown lands, it was not an unusual thing for the early surveyors to omit to shew allowances for roads by two parallel lines in their plans. The absence of lines to mark a roadway on a plan of survey made in the latter part of the 18th century is not inconsistent with a road having been actually provided for in the survey.

And when it is found that the department, in its working plans, compiled from the records of the survey, and such other information as it presumably had at the time, has recognized the existence of roadways, and that numerous patents for lots have issued with reference to the existence of such roadways, it should be taken that they were properly provided for in the survey, unless cogent evidence to the contrary is forthcoming.

The defendants rely strongly upon Fortune's field notes as shewing the absence of any provision for a roadway. I have endeavoured to follow them throughout, and I do not think they lead to the conclusion contended for by the defendants, but rather the contrary.

Upon the whole case I agree in the conclusion that there is a road allowance between the townships, not merely between East Hawkesbury and the gore of Lochiel, but also along the easterly boundary of Lochiel, and I think there ought to be a declaration to that effect. No owner of any of the lots held